



SEP 10 1940

CHARLES ELMORE CROPLEY  
CLERK

# SUPREME COURT OF THE UNITED STATES.

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OCTOBER TERM, 1939.

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Nos. 130, 131.

WILLARD MANUFACTURING COMPANY,  
Petitioner,

v.

J. E. KENNEDY, Former Collector,

and

WILLARD MANUFACTURING COMPANY,  
Petitioner,

v.

ROBERT W. McCUEN, Collector.

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PETITION FOR WRITS OF CERTIORARI TO THE CIRCUIT  
COURT OF APPEALS FOR THE SECOND CIRCUIT.

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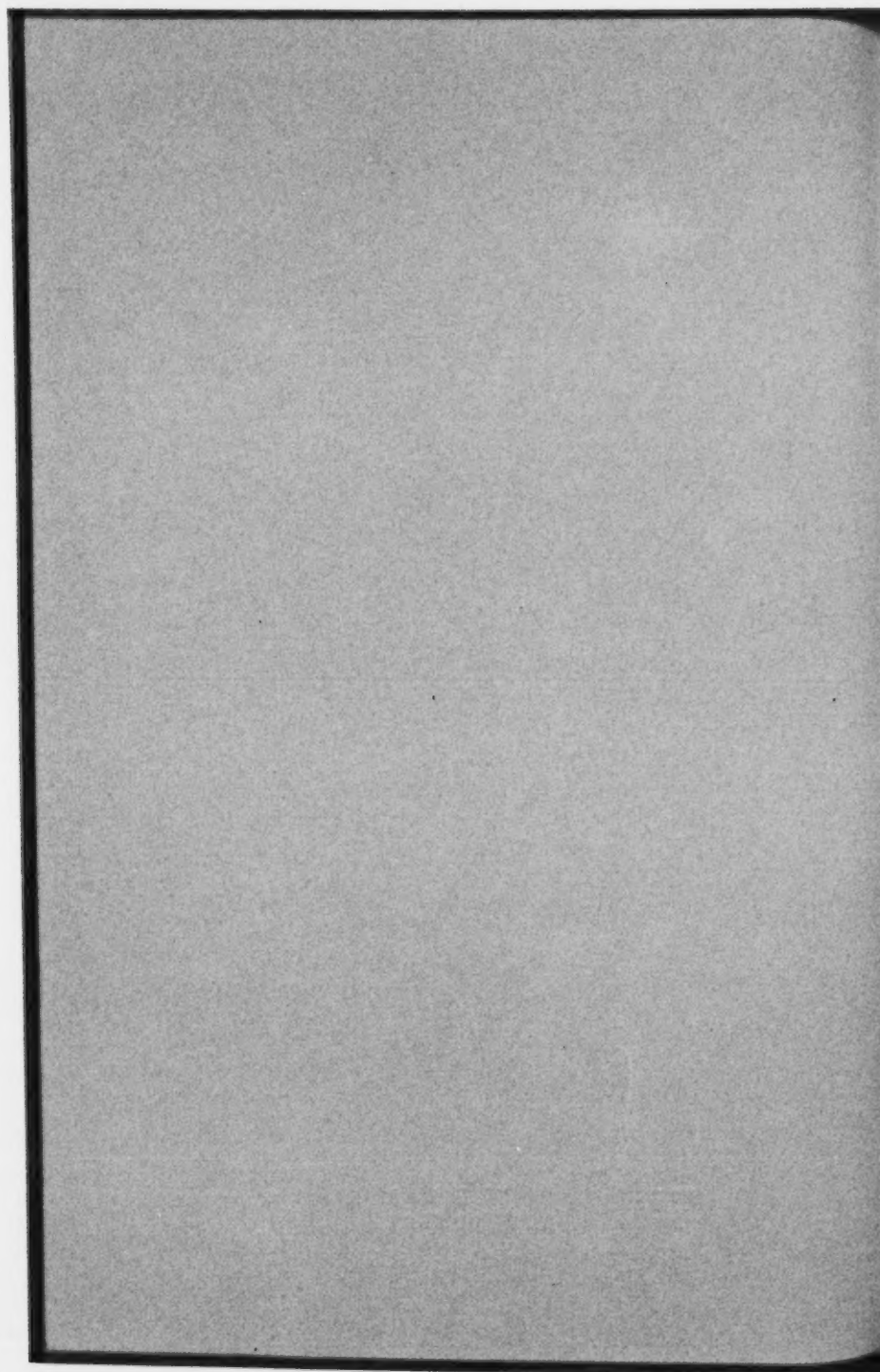
PETITIONER'S BRIEF IN REPLY.

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O. WALKER TAYLOR,

11 Beacon Street, Boston, Massachusetts,

*Attorney for Petitioner.*



**In the  
Supreme Court of the United States.**

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**OCTOBER TERM, 1940.**

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**Nos. 130, 131.**

**WILLARD MANUFACTURING COMPANY,  
PETITIONER,**

*v.*

**J. E. KENNEDY, FORMER COLLECTOR,**

**AND**

**WILLARD MANUFACTURING COMPANY,  
PETITIONER,**

*v.*

**ROBERT W. McCUEN, COLLECTOR.**

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**PETITION FOR WRITS OF CERTIORARI TO THE CIRCUIT COURT OF  
APPEALS FOR THE SECOND CIRCUIT.**

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**PETITIONER'S BRIEF IN REPLY.**

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*To The Honorable, The Chief Justice and the Associate  
Justices of the Supreme Court of The United States.*

By way of reply to the brief of the respondents in opposition, the petitioner begs leave to call the attention of the Court to two matters:

*First:* One page 5 of the brief of the respondents in opposition the following statement is made:

"Petitioner asserts that the evidence supports the district court (Pet. 8-10). Petitioner has omitted, however, to certify to this Court the exhibits, including its tax returns for 1920 and prior years, which were before the circuit court of appeals and on which it made its decision. Hence there is no opportunity for adequate consideration of this question by this Court."

Immediately after the Circuit Court of Appeals had rendered its decision in these cases the Clerk of that Court returned all of the exhibits to the Clerk of the District Court at Burlington, Vermont. The petitioner thereupon requested the Clerk of the District Court to forward the exhibits in order that they may be submitted with the petition for certiorari if such should appear to be necessary. On May 8, 1940, the following letter was received from the Clerk of the District Court:

"DEPARTMENT OF JUSTICE

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UNITED STATES DISTRICT COURT  
Office Of The Clerk  
District of Vermont

Burlington, Vermont,  
May 8, 1940.

"O. Walker Taylor, Esq., Attorney at Law, 11 Beacon  
Street, Boston, Mass.

Dear Sir:

"I have your letter of May 7, requesting that the exhibits in the Willard Manufacturing Company cases against Kennedy and McCuen be sent to you.

The practice in this District is for the parties to retain control of their own exhibits.

Accordingly upon receipt of your request I have examined a package of exhibits in these cases which I

received from the Clerk of the Circuit Court of Appeals several days ago and have today delivered to the United States Attorney, Joseph A. McNamara, Burlington, Vermont, the defendant's exhibits in these cases and am sending to you the plaintiff's exhibits by railway express.

The exhibits being sent you are plaintiff's exhibits 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14 and 15.

With best wishes, I am

Sincerely,

/s/ AUSTIN H. KERIN  
Clerk."

When the petition and printed record were filed with the Clerk of the Supreme Court it was not thought that all of the exhibits were necessary for the consideration of the petition for certiorari by this Court. Since the Government has raised the question, however, the petitioner is filing herewith the plaintiff's fifteen (15) exhibits mentioned above and counsel for the respondents have been and are hereby requested to file the defendants' exhibits with the Clerk of this Court before September 15, 1940 when, as we understand, the petition for certiorari and briefs are to be submitted to the Court. A complete list of the exhibits is presented in the table of contents of the record. The petitioner's fifteen exhibits herewith presented are the originals presented in the District Court as shown by the markings of the Clerk of that Court.

*Second:* On pages 6 and 7 of the brief of the respondents in opposition the following statement is made:

"Finally, this question arises in this case only upon acceptance of petitioner's contention that its 1920 return was at cost or market, whichever is lower, and that contention is not properly before the Court and, if it were, would present no question of general importance."

It is clearly obvious that the question of whether or not the petitioner's 1920 return was made on the basis of cost or market, whichever is lower is properly before this Court. The respondents themselves present that question on page 2 of the brief in opposition. The District Court not only found but rendered a separate decision on this question (R. pp. 33 and 34) as follows:

"The decision is that the plaintiff inventoried its merchandise August 31, 1920, 'at cost or market, whichever was lower', . . . 'as it had done in prior years'. The defendants except to this decision, for it says there was no evidence that the plaintiff had inventoried its merchandise at cost or market, whichever was lower, in 1920 or in prior years."

The fact that the Circuit Court of Appeals overruled this decision of the District Court is the strongest reason why the petitioner is appealing to this Honorable Court for a hearing on the question, which, contrary to the statement of the respondents, is of some general importance because it is most unusual for a Circuit Court of Appeals to overrule such a strong finding and ruling on matters of fact when made by the trial Court.

#### CONCLUSION.

For these and other reasons, therefore, it is respectfully submitted (1) that the grounds stated by the respondents in opposition to the allowance of certiorari in these cases are untenable and (2) that the petition for certiorari should be allowed for all of the reasons stated in the petitioner's brief.

Respectfully submitted,

O. WALKER TAYLOR,  
*Attorney for Petitioner.*

